CONTRACT #4
RFS # N/A

Tennessee
Board of Regents

VENDOR:
WebCT, Inc.

January 11, 2006

Mr. Jim White, Executive Director
Legislative Fiscal Review Committee
Rachel Jackson Building, 8th Floor
Nashville, TN 37243-0057

Dear. Mr. White:

Attached is an Agreement between the Tennessee Board of Regents and WebCT, Inc. which provides course management system software that supports our Regents' Online Degree Program (RODP). This software is currently being provided to TBR by WebCT, but in a subcontracting role through our current contract with SungardSCT. WebCT and SungardSCT will not be renewing their business relationship beginning January 1, 2007, and we are requesting to contract with WebCT direct. Also attached is the necessary documentation to explain this request and our timeline in regards to this contract.

Please contact Angela Gregory regarding the date this will go before the Fiscal Review Committee, and she will inform the representatives to insure they are present for the meeting in which the contract will be discussed. If you have questions, please feel free to contact me at 366-3921 or Ms. Gregory at 366-4436. Information regarding the contract may be sent to Ms. Gregory's attention at the Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217.

Sincerely,

Bob Adams
Vice Chancellor for Business and Finance

Attachment

cc: Tom Danford, Chief Information Officer
      Robbie Melton, Assistant Vice Chancellor for Academic Affairs

Leni –

Just wanted to let you know that the actual contract
in this packet is not the final contract; we are still
negotiating the impermissible clauses with the vendor.

Thanks.

Angela Gregory

TENNESSEE BOARD OF REGENTS

JUSTIFICATION FOR NON-COMPETITIVE PURCHASES AND CONTRACTS

FOR $250,000 AND GREATER

(1) <u>Description of service to be acquired:</u>

Continued maintenance and support for the WebCT Campus Edition 4.1 Course Management System (CMS) Software for all Tennessee Board of Regents (TBR) institutions and the Regents Online Campus Collaborative (ROCC).

WebCT, Inc. is a course management system used to facilitate the organization and presentation of course content. In addition, the software provides a means for student assessment, record keeping, and communication between students and between student and teacher. WebCT runs on a server and interfaces with a database containing all learning objects and student records. The software may be used as one component supporting traditional classroom instruction or may be used as the primary delivery system for totally asynchronous online courses. WebCT facilitates quizzes, assignment submission, threaded discussions, internal e-mail, web page delivery, multimedia delivery, and other components, all within a password protected, restricted environment.

(2) <u>Explanation of the need for or requirement placed on the procuring institution to acquire the service:</u>

For campuses to develop and offer online courses and programs and to continue the state wide Regents Online Campus Collaborative of RODP/ROCE, a course management system (CMS) is vital. Without a CMS, TBR would have to cease providing online courses which are mission critical for access to higher education in Tennessee. In addition, TBR would not be able to address the needs and demand for online workforce training, would be significantly limited in the delivery of educational programs to address the nursing and teacher shortage, and would be severely limited in the delivery of education and training to Tennessee military personnel.

In addition to the need to continue licensing for a CMS system, updates, patches, bug fixes, workarounds, enhancements, and technical support are necessary for the delivery of online courses and programs. Although TBR has experienced no unmanageable problems with our current system, which would necessitate that we move to improved technology immediately, TBR's system contract expires 12/31/06.

(3) <u>Name and address of the proposed contractor's principal owner(s):</u>

WebCT, Inc.
6 Kimball Lane, Suite 310
Lynnfield, MA 01940
Phone: 781-309-1000
Fax: 781-309-1001

(4) <u>Evidence that the proposed contractor has experience in providing the same or similar service and evidence of the length of time the contractor has provided the same or similar service:</u>

WebCT is an industry leader and delivers to thousands of institutions in more than 70 countries. WebCT has provided service to the TBR system since the Fall Semester 2001.

(5) <u>Explanation of whether the service was ever bought by the procuring institution in the past, and if so, what method was used to acquire it and who was the contractor:</u>

The service has been purchased by TBR in the past through its contract with SungardSCT, with WebCT providing the service in a subcontracting role through a non-competitive process.

(6) <u>Description of procuring institution's efforts to use existing institutional employees and resources or, in the alternative, to identify reasonable, competitive, procurement alternatives (rather than to use non-competitive negotiation):</u>

The WebCT license is for complex, copyrighted software. TBR does not have the staff or resources to create software of this magnitude, including system wide course management implementation, monitoring, student information integration, etc.

TBR is in the process of developing a comprehensive request for proposal for the ROCC program which has been scheduled to be released in early 2006. A competitive process is needed as there are alternative providers in the market place.

(7) <u>Justification of why the state institution should acquire the service through non-competitive negotiation:</u>
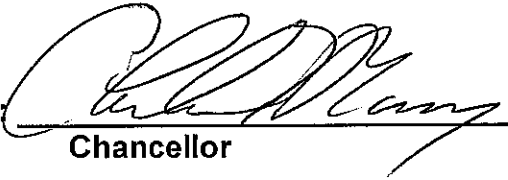
It would not be in the best interests of the state to do an RFP and convert to an upgraded system at this time due to the fact that the two CMS providers with the largest market share, WebCT and Blackboard, are in the process of a merger. TBR does not want to buy a product that may not be supported by the merged company. TBR would run a risk of having two potential conversions in a relatively short period of time which would be costly from a fiscal and training perspective. In addition, the proposed merger of these two companies has created an unsettled market which creates undue risk in selecting the best vendor in the near term.

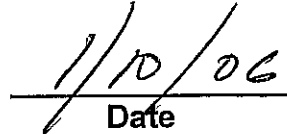To minimize this risk, TBR proposes to delay issuance of an RFP until later in 2006, giving the market time to adjust and to continue with our current provider during this time. The RFP process will be intensive and complex, and will take TBR approximately nine to twelve months to complete. In addition, it is our understanding that it will take approximately one year to convert to updated technology.

The use of competitive negotiation to issue a one to two year contract to continue with TBR's existing vendor would be in compliance with state purchasing requirements, which permit a negotiated contract with a current vendor when it is not in the state's best interest to use a competitive process. (F&A Rule 0620-3-3-.03 and TBR Purchasing Policy Section XIV.B.8.)

Additional background information is provided in Attachment A.

APPROVAL: _____   1/10/06
                    Chancellor   Date

REVIEW BY FISCAL REVIEW COMMITTEE:

_____   _____
            Chairman   Date

Attachment A
Justification for Non-Competitive Contract with WebCT, Inc.

Background Information:

Tennessee Board of Regents Institutions currently use a course management system (CMS) called WebCT. This CMS is a web-based technology used by TBR faculty to plan, implement, and assess learning processes for on-line and traditional courses. It provides faculty with a way to create and deliver content, monitor student participation, and assess the performance of students. It also provides students and faculty with the ability to use interactive features such as threaded discussions, on-line conferencing/chat, and discussion forums. Like all sophisticated technology, there is a considerable learning curve to master the features of such software, and once mastered, there is a considerable investment of time in the actual creation of the courseware content and incorporation into the CMS.

Existing Contract, Maintenance and Extenuating Circumstances:

TBR's existing contract and maintenance for WebCT is not directly with WebCT, but with a 3rd party vendor, SungardSCT. This contract expires December 31, 2006 and is not renewable because WebCT and SungardSCT have decided not to renew their business relationship (see attached letter from WebCT as well as SCT's Institutional Order Form). The TBR CMS contract situation has been further complicated by the announced acquisition of WebCT by its largest competitor, Blackboard. Subject to regulatory approval, the combination of Blackboard with 41.3% of the CMS market as reported in the September '05 EDUCAUSE Core Data Service coupled with the 34.7% of WebCT would give the merged company 76% of the CMS market. WebCT and Blackboard will continue to operate as independent companies until approval of the merger, which is not likely not happen until the first or second quarter of 2006. At present, there are approximately half a dozen competitors to WebCT and Blackboard, none of which has a significant share of the market, but many are considered "up and comers."

Rationale for No Bid Contract:

TBR has been developing and intended to release an RFP early 2006, to solicit bids for a new CMS Contract. However, in light of the pending merger of the two largest companies in the market, TBR felt it to be in the best interest of the system to delay issuing this RFP until later in 2006. TBR has determined that the most prudent approach is to negotiate a short term, non-competitive contract with WebCT. This would establish a direct business relationship with WebCT to extend TBR's use of WebCT products and services for a limited term. This decision is based on the following considerations:

1- It would greatly reduce the risk in selecting a CMS provider prior to learning what the post merger strategy of a combined WebCT and Blackboard will be.

2- It would establish a direct business relationship and pricing structure between TBR and WebCT rather than through a 3rd party.
3- It would allow BlackBoard and WebCT to conclude their planned merger and to establish a consistent product direction.
4- It would position TBR to go back to the market with an RFP when the market will be more stable, and when selection can be made from potential vendors.

Risk Analysis:

There is an incredible amount of uncertainty as to which product line the merged WebCT/Blackboard will offer and support. As indicated above, TBR presently uses WebCT, and industry analysts feel it doubtful that the new company would continue to develop and support two separate product lines for any length of time. TBR anticipates that the merged company will discontinue one of the lines and incorporate its best features and usability characteristics into a new flagship product. Should TBR select the product line that later proves to be the discontinued product, tremendous resources would end up being expended to convert the existing system to a system that would be discontinued, and then to yet a third system.

Delaying the RFP and conversion process should provide sufficient time for the market to react to the merger of WebCT and Blackboard and to enable up and coming CMS providers to establish themselves as viable alternatives.

WebCT

December 21, 2005

Tom Danford
Chief Information Officer (CIO)
Tennessee Board of Regents
1415 Murfreesboro Road
Suite 350
Nashville, TN 37217

Dear Tom,

I am writing to you as an officer and Executive Vice President for WebCT. The purpose of this letter is to confirm that WebCT is the only authorized manufacturer and distributor of WebCT software, support, training and services in the United States and Canada. SCT is not authorized to contract for WebCT products and services after December 31, 2006.

We appreciate your interest in WebCT and look forward to working together. If you have any questions, please do not hesitate to contact your local Account Executive, Colleen Malloy at 781-309-1129 or at Colleen.Malloy@WebCT.com.

Sincerely,

Peter Segall
Executive Vice President
WebCT

Please complete two (2) copies of this Institutional Order Form and sent to SCT at the address shown. A signed and accepted copy will be returned to you. Also, please FAX a signed copy to: John McAllister @ 770.446-5083   (2.2.98)

Institutional Order Form

Order #: 2001.6.30.1 (year.month.day.sequence #)

To: **John McAllister**	770.446-0004	**Ship Media**
SCT Corporation		**NA**
4189 Riverview Drive	jmcallis@sctcorp.com	**Tier**
Duluth, GA 30097	FAX: 770.446-5083	**NA**

@sct

Re: ● Right of use of Major System(s) by the Institution pursuant to the Software License and Service Agreement
dated January 29, 1993 ("Agreement"), between the Tennessee Board of Regents ("Licensee") and SCT
Software & Technology Services, Inc. ("SCT") and as Amended in December 1996 and January 2001.

All Agreement Terms shall have the same meaning ascribed in the Agreement when used in this document.

Institutional Order Form to change the address of the Invoice for WebCT from each Institution to the TBR Office.

Billing Address: FAX No.: 615.366-4464	WebCT Campus Edition is an annual license which the institution
Tennessee Board of Regents	has agreed to obtain for five annual license periods - through
Attn: Raja Kodali, AVC for Information Technology	2006. The Annual License Fee will be paid to SCT in August for
1415 Murfreesboro Road, Suite 350	that calendar year. The WebCT License Fee for each year will
Nashville, TN 37217	not exceed 110% of the immediately preceding year's fee.

August 2002 Invoice is: $ 340,000	**Annual Payment amounts - based on the Agreement**		
August 2003 Invoice is: $ 404,250	**Aug-04: $ 444,675**	**Aug-05 $ 489,143**	**Aug-06 $ 538,057**

Institutional Order Forms/Amounts for each institution, generally signed in December 2001, are:

2002	APSU	*22,500*	U of M	Paid	JSCC	15,000	RSCC	15,000
	ETSU	*22,500*	CleSCC	15,000	MSCC	15,000	STCC	18,500
	MTSU	25,500	CoSCC	15,000	NSTI	18,500	VSCC	16,500
	TSU	22,000	CSTCC	18,500	NSTCC	15,000	WSCC	15,000
	TTU	22,000	DSCC	15,000	PSCC	18,500	TBR	15,000 (w/ Ren.Ctr)

The license fee for the System(s) identified in this document is for the Institution named in this
document, and to be used in accordance with the Terms and Conditions of the Agreement, and
Licensee will pay SCT the applicable license fee(s) in accordance with the Agreement.

Tennessee Board of Regents		Sign
By: _____ Title _____		◄ TBR
Agreement with the Tennessee Board of Regents.		
Accepted by SCT on _____, 2002.		Sign
By: _____ Title: _____		◄ SCT

SOFTWARE LICENSE AGREEMENT FOR WEBCT CAMPUS EDITION™ SOFTWARE AND/OR WEBCT VISTA MODULES

(Single Institution, Annual or Subscription)

Licensee Name: _____

Licensee Address: _____

_____

_____

THIS SOFTWARE LICENSE AGREEMENT FOR WEBCT CAMPUS EDITION™ AND/OR WEBCT VISTA MODULES (the "Agreement") is between **WebCT, Inc.**, a Delaware corporation with its principal place of business at Six Kimball Lane, Lynnfield, Massachusetts 01940 ("WebCT"), and the licensee named above ("Licensee"). This Agreement is intended to serve as a master license agreement under which Licensee may acquire licenses for WebCT Campus Edition Institution, WebCT Campus Edition Focus and/or any of the individual WebCT Vista Modules (as defined below) pursuant to the terms and conditions set forth herein, subject to the execution by the parties of an order schedule to this Agreement expressly identifying the particular WebCT software product being licensed. Licensee acknowledges and agrees that WebCT Campus Edition Institution, WebCT Campus Edition Focus and each of the WebCT Vista Modules are separate and distinct WebCT product offerings, each requiring its own license. Accordingly, the parties hereby agree that the terms and conditions of this Agreement shall apply to (i) the particular WebCT Campus Edition (i.e. Institution or Focus) and/or WebCT Vista module software programs specifically named in any fully-executed order schedule to this Agreement ("Order Schedule"), including any programs of WebCT's licensors that are delivered by WebCT with or as part of such identified software program(s), and any and all copies, in whole or in part, backups, related documentation, system administrator guides and user manuals, printed listings of code, any database or data structures delivered with or created by the identified software program(s) and any patches, bug fixes, workarounds, upgrades, enhancements, and updates to the identified software program(s) which may be subsequently furnished by WebCT to Licensee hereunder (collectively, the "Software") and (ii) any Support Services (as defined in Section 8.1) relating to the Software provided by WebCT to Licensee.

For purposes of this Agreement, "WebCT Vista Modules" as used herein shall refer to those modules (under any name) that are now known as the "WebCT Vista Community Manager", "WebCT Vista Learning Object Manager", "WebCT Vista PowerLinks Kit", and "WebCT PowerSight Kit" and any future modules of similar nature made generally available by WebCT that add WebCT Vista functionality to the WebCT Campus Edition software.

In consideration of the mutual promises contained herein, the parties agree as follows:

1. GRANT OF LICENSE

1.1 License Grant. Upon execution by the parties of this Agreement and an initial Order Schedule to this Agreement specifying the particular Software program being licensed and subject to payment by Licensee of the applicable license fee(s) set forth in such Order Schedule and compliance with the terms and conditions of this Agreement, WebCT hereby grants to Licensee, during the License Term (as defined below) and any renewal thereof under Section 2.2, a nonexclusive, nontransferable license ("License") to use and copy the Software, in object code format, in accordance with the terms and conditions set forth herein. This is a license agreement and not an agreement for sale. All rights not specifically granted are reserved by WebCT.

1.1.1. Educational Institutions. If Licensee is an educational institution, Licensee shall be authorized under the License to use the Software solely for Licensee's academic and internal administrative

purposes. Unless otherwise agreed in writing, Licensee shall limit access to the Software to its students (including guest students who are accessing the Software for the purpose of participating in a Licensee offered and delivered course), faculty (including guest faculty who are accessing the Software for the purpose of delivering a Licensee-offered course on behalf of Licensee), administrators, other employees, and/or contractors whose responsibilities require such access, subject to the maximum authorized usage limit specified for the License in the applicable Order Schedule as further described in Section 1.1.3 below.

For purposes of clarification, in addition to its standard course offerings, Licensee's academic purposes shall include use of the Software for programs, courses, seminars, conferences, or discussions that are offered and delivered by Licensee on an incidental basis ("Incidental Usage"), provided that such usage does not cause Licensee to exceed the maximum authorized usage limit set forth in the applicable Order Schedule. Notwithstanding the foregoing or anything to the contrary contained herein, in the case of an FTE-based license (as "FTE" is defined in Section 1.1.3 below), Licensee shall be authorized under such License to grant access to the Software, solely for purposes of such Incidental Usage, to a limited number of individuals who are not included in Licensee's FTE calculation, the total number of whom shall not, at any given time, exceed five (5%) percent of the maximum authorized FTE number specified in the applicable Order Schedule (e.g. if the authorized FTE level specified in the applicable Order Schedule is 8,001 – 15,000, the total number of individuals who are not included in Licensee's FTE calculation but who may be granted access to the Software for Incidental Usage as set forth herein shall not, at any given time, exceed five (5%) percent of 15,000, or 750 individuals). Nothing in this paragraph shall be deemed to authorize Licensee to (i) host the Software on behalf of or for the sole benefit of a third party or parties, (ii) host the Software for any purpose that does not involve participation by Licensee, or (iii) use or host the Software in violation of Section 4.4 below.

In addition, notwithstanding the authorized FTE limit specified in the applicable Order Schedule or anything to the contrary contained herein, Licensee shall be authorized under an FTE-based License to allow an unlimited number of prospective students to use the Software to access sample Licensee courses, provided that no actual course activity is involved.

1.1.2. Non-Educational Entities. If Licensee is a non-educational entity (commercial, government, or otherwise), Licensee shall be authorized under the License to use the Software solely for purposes of (i) providing internal training to its employees and/or contractors, (ii) providing training to its customers or business partners on the use of Licensee's products and/or services, and/or (iii) delivering Licensee-developed training courses to Licensee's customers. In no event shall Licensee be authorized under the License to provide contracted course development services using the Software without the prior written consent of WebCT. Unless otherwise expressly agreed in writing, Licensee shall limit access to the Software to its employees and/or contractors whose responsibilities require such access and to participants in Licensee's training classes as permitted herein, subject to the maximum authorized usage limit specified for the License in the applicable Order Schedule as further described in Section 1.1.3 below.

1.1.3. Usage Limits. Except as expressly set forth herein, all use of the Software hereunder shall be subject to certain maximum

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Rev 050630

WebCT, Inc.
Software License Agreement

CEI.CEF.Vista Modules SLA 050630b.doc
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usage limits (i.e. FTE, Seats, User, etc.) as specified in the applicable Order Schedule. For purposes of this Agreement, the following definitions shall apply, unless otherwise stated in the applicable Order Schedule.

(i) "FTE" shall be defined as a full time student equivalent enrollment.

(ii) A "Seat" shall be defined as a single course participant enrolled in a single course, section, module, or program. Such participant shall continue to constitute a single Seat for as long as he/she is authorized by Licensee to access such course, section, module, or program (e.g. A single participant who is authorized by Licensee to access two separate courses at the same time shall constitute two Seats for as long as such participant is authorized to access each such course).

(iii) A "User" shall be defined as an individual registered at any one time in one or more Licensee-delivered courses (e.g. an individual who is registered in two courses shall constitute one (1) User).

Licensee acknowledges and agrees that, unless otherwise expressly stated herein or agreed upon in writing by the parties, use of the Software in excess of the maximum usage limits specified in the applicable Order Schedule is not permitted.

1.2.   Installation. Each License granted hereunder authorizes the installation and use of such Software (i) on a single identified production server for production purposes only (in the case of WebCT Campus Edition version 6.0 or higher, with one single application server managed node actively processing requests) and (ii) a single identified non-production server for internal testing, back-up, and/or development purposes only, unless otherwise provided for in the applicable Order Schedule or agreed upon in writing by the parties. The location of each server on which the Software is to be installed shall be designated in writing by Licensee to WebCT at the time the applicable Order Schedule is executed (the "Designated Location"). Unless otherwise provided for in the applicable Order Schedule or agreed upon in writing by the parties, use of the Software is not permitted (a) for production use on other than the single production server identified to WebCT, (b) on the identified non-production server(s) for other than internal testing, back up and/or development purposes, or (c) at a location other than the Designated Location.

1.3   Delivery. WebCT shall deliver electronically to Licensee one copy of the Software and related documentation, if any, or provide access to the Software via the Internet promptly after the date on which the applicable Order Schedule is signed by the parties and all necessary IP address and operating system information has been provided by Licensee to WebCT.

1.4   License Keys. Licensee acknowledges that the Software shall be activated by a license key consisting of identification codes which shall be provided to Licensee electronically promptly after receipt by WebCT of Licensee's IP address and operating system information.

1.5   Compliance. Upon WebCT's written request (which shall occur no more than once every six (6) months), Licensee shall provide WebCT with a written statement, certified by an authorized representative of Licensee, listing Licensee's then-current FTE Level or, if applicable, the number of Seats or Users (or any other applicable usage limit(s) specified in the applicable Order Schedule) having access to the Software, the number of copies of the Software in use and the number of servers on which the Software is installed. Such statement shall include a confirmation that the use of the Software has been reviewed and that each copy of the Software is being used solely pursuant to the provisions of this Agreement. WebCT will have the right, at its expense, to conduct and/or direct an independent accounting firm to conduct, during normal business hours, an audit of the relevant records of Licensee to verify Licensee's then-current FTE Level or, if applicable, the number of Seats or Users (or any other applicable usage limit(s) specified in the applicable Order Schedule) having access to the Software, the number of copies of the Software in use and the number of servers on which the Software is installed.

1.6   Copies. Licensee may make additional copies of the Software only to the extent reasonably necessary (i) for Licensee's internal purposes as set forth in Sections 1.1 and 1.2, subject to the number of servers on which the Software is permitted to be installed as set forth herein and (ii) for archival and back-up purposes.

2.   TERM; TERMINATION

2.1   Term of Agreement. This Agreement shall be effective as of the date on which it is signed by both parties (the "Effective Date") and shall remain in effect unless and until terminated in accordance with the provisions set forth in Sections 2.3 or 2.4 below. The expiration of any License Term hereunder shall not constitute termination of this Agreement.

2.2   Term of License. Unless otherwise stated in the applicable Order Schedule, the initial term of the License shall commence upon the execution by the parties of such Order Schedule and shall remain in effect for the number of years (or such other period of time) set forth in such Order Schedule (the "License Term"), unless earlier terminated in accordance with the provisions of Section 2.4 below. Upon expiration of the initial License Term, the License may be renewed thereafter for successive terms, if then made generally available by WebCT, subject to payment by Licensee of the then-current applicable License fees and provided that an additional Order Schedule for such renewal is executed by the parties prior to the end of the expiring License Term. Upon execution of an additional Order Schedule, WebCT shall provide Licensee with a new license key. If both parties mutually agree in writing to renew the License by executing an additional Order Schedule as set forth above, the term of each such License renewal shall begin immediately as of the expiration of the prior License Term, unless otherwise agreed in writing by the parties.

2.3   Termination of Agreement upon Expiration of Licenses . Upon the expiration of all Licenses contracted via fully-executed Order Schedules under this Agreement, either party may terminate this Agreement without cause by providing at least thirty (30) days' prior written notice to the other party. In no event, however, may either party terminate this Agreement or any License prior to the expiration of the contracted License Term specified on the applicable Order Schedule, except as set forth in Section 2.4 below.

2.4   Termination for Cause. Upon any breach by Licensee of Sections 1.1, 1.2 or 4 of this Agreement, WebCT shall have the right to terminate this Agreement and the Licenses granted hereunder effective immediately upon written notice to Licensee. Upon any other material breach or default of this Agreement by either party, the other party shall provide the breaching party with written notice of the breach. If the breaching party fails to cure such breach within (30) days following receipt of such written notice, then the non-breaching party shall have the right to terminate this Agreement and the Licenses granted hereunder effective immediately upon written notice to the breaching party.

2.5   Effect of Expiration or Termination. In the event of the expiration or termination of a License or termination of this Agreement for any reason, Licensee shall promptly, as to the Software under such License or the Agreement, as applicable,: (i) discontinue all use of the Software; (ii) erase or destroy any Software contained in the computer memory or data storage apparatus under the control of Licensee; (iii) return to WebCT or destroy all copies of the Software provided by WebCT and any and all copies made by Licensee; and (iv) certify in writing to WebCT, within thirty (30) days of the expiration of the License or termination of this Agreement, that Licensee has complied with the foregoing.

2.6   Survival. Sections 2.5, 2.6, 3, 4, 5, 6.2, 7, 8.2, 9.1, 9.2, 9.5, 9.6, 9.7 and 9.8 hereof shall survive the expiration of any License or the termination of this Agreement.

3.0   LICENSE FEES AND PAYMENT TERMS

3.1   License Fee. In consideration of the License(s) granted hereunder and Licensee's commitment to license the Software for the full License Term set forth in the applicable Order Schedule, the License fee(s) for the License Term shall be as specified in the applicable Order Schedule. Unless otherwise specified therein, the annual License fee for the first year of the License Term shall be invoiced upon execution by the parties of such Order Schedule and the annual fee for any remaining years of the License Term shall be invoiced on or about, but no earlier than, thirty (30) days prior to the first day of each such year, respectively. All invoices shall be due and payable within thirty (30) days following the invoice date. All fees referenced under this Agreement shall be shown, invoiced, and payable in U.S. Dollars, unless otherwise expressly indicated in the applicable Order Schedule.

3.2   Taxes. Licensee shall pay all sales, use, and similar taxes applicable to the Software and this Agreement and, except to the extent that Licensee provides WebCT with appropriate documentation verifying that the License of Software to Licensee hereunder is tax exempt, shall reimburse WebCT for any such taxes paid by WebCT, excluding taxes based on the net income of WebCT. If Licensee is subject to the tax laws of a country other than the United States and is required by law to make any deduction or to withhold from any sum payable to WebCT hereunder, then the sum payable by Licensee upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, WebCT receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount WebCT would have received and retained in the absence of such required deduction or withholding.

4.   PROTECTION OF THE SOFTWARE

4.1   Ownership. Licensee acknowledges and agrees that WebCT and its licensors retain all title, copyrights, patents and other proprietary rights in and to the Software. Licensee agrees any updates, patches, bug fixes, workarounds, upgrades, and enhancements to the Software furnished in connection with any Support Services (as defined below) shall be the sole and exclusive property of WebCT, subject to use by Licensee in accordance with the terms and conditions of this Agreement and only during the applicable License Term.

4.2   Proprietary Markings. Licensee shall not alter, remove or conceal any government restricted rights notice or any copyright, trademark, trade name or other proprietary marking or notice that may appear in or on the Software and shall reproduce all such markings and notices in or on all copies of the Software made by Licensee. Notwithstanding the foregoing, Licensee may remove the WebCT logo from the user interface screens of the Software and replace it with Licensee's own institution logo, PROVIDED THAT, IF THE WEBCT LOGO IS REMOVED FROM A SINGLE USER INTERFACE SCREEN, IT IS REMOVED FROM ALL USER INTERFACE SCREENS. To the maximum extent permitted by applicable law, Licensee shall indemnify, defend and hold WebCT harmless from and against any and all claims, demands or actions and costs, liabilities or losses arising out of any actual or alleged infringement of any third party trademark or copyright by Licensee's logo or other intellectual property in connection with such User screens. No other usage or removal of any WebCT proprietary notices or trademarks is authorized hereunder.

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7.3 No Consequential Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR WEBCT'S LICENSORS BE LIABLE UNDER THIS AGREEMENT FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT THAT NO SUCH LIMITATION SHALL APPLY IN THE EVENT OF A BREACH BY LICENSEE OF SECTIONS 1.1, 1.2 OR 4 OF THIS AGREEMENT.

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8.2 Support Service Fees. Support Services fees for any enhanced Support Service option selected by Licensee shall be as specified in the then-current applicable Order Schedule. Unless otherwise stated therein, such Support Services fees shall be invoiced upon execution by the parties of such Order Schedule and shall be due and payable within thirty (30) days following the date of invoice.

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9.1 U.S. Government Restricted Rights. In the event that Licensee is an agency of the United States Government, or that a License granted hereunder is pursuant to a contract with either a defense or civilian agency of the United States Government, Licensee hereby acknowledges that the Software licensed hereunder is commercial computer software developed at private expense and provided to Licensee subject to restricted rights. Use, duplication, or disclosure by the Government is subject to the restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or the restrictions set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights clause at 48 CFR 52.227-19, as applicable, or in successor provisions, as well as the limitations set forth herein. Manufacturer is WebCT, Inc., Six Kimball Lane, Lynnfield, Massachusetts 01940.

9.2 Export Control. Licensee acknowledges that it is subject to United States laws and regulations controlling the export of technical data, computer software and other commodities and agrees not to export or allow the export or re-export of such data, software or other commodities in violation of such laws and regulations.

9.3 Notices. Any notice that is required to be given hereunder shall be in writing and delivered to the addresses and titles set forth below by certified mail (return receipt requested), a recorded delivery service, or by other means of delivery requiring a signed receipt. All notices shall be effective upon receipt. If an address is not supplied for Licensee below, notices to Licensee shall be sent to the address set forth on the first page of this Agreement, to the attention of the signature name set forth below. The addresses provided herein may be changed

at any time on prior written notice.

    If to WebCT: Six Kimball Lane
                  Lynnfield, Massachusetts 01940
                  Attn.: Exec. VP, C.F.O and Treasurer

    If to Licensee: _____
                    _____
                    _____
                    _____

9.4   Assignment. This Agreement and the Licenses granted hereunder may not be assigned, sublicensed, or otherwise transferred by Licensee to another person or legal entity, whether by merger, consolidation, sale of assets or otherwise, without the prior written consent of WebCT.

9.5   Waiver. The failure of either party to enforce in any one or more instances any of the terms and conditions of this Agreement shall not be construed as a waiver of future performance of any such term or condition. Waiver of any term or condition shall be deemed to have been made only if expressed in writing by the party granting such waiver.

9.6   Severability. If any provision of this Agreement shall be held by a court of law of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be reformed, construed and enforced to the maximum extent permissible, and the remaining provisions shall remain in full force and effect.

9.7   Governing Law. The parties agree that this Agreement will be governed by, interpreted, and construed in accordance with the laws of the Commonwealth of Massachusetts, U.S.A. Each of the parties hereby irrevocably submits to the exclusive venue and jurisdiction of any federal or state court sitting in Boston, Massachusetts in any action, suit or proceeding brought against it by the other party under this Agreement. The UN Convention on Contracts for the International Sale of Goods will not apply. The English language version of this Agreement shall govern.

9.8   Entire Agreement. This Agreement and all fully executed Order Schedules attached hereto constitute the entire agreement and understanding between the parties relating to the subject matter hereof, and supersede any and all oral and prior written representations, understandings or agreements between the parties with respect thereto. The parties hereby agree that the terms and conditions of WebCT's electronic license agreement, if any, located at the download site for the software shall not apply to the Software licensed hereunder, even if accepted by Licensee after the Effective Date of this Agreement. Printed terms and conditions on Licensee's purchase order shall not apply, even if executed by WebCT before or after the Effective Date of this Agreement. The subject matter of this Agreement is limited to the rights expressly granted herein. The terms of this Agreement shall have no force and effect with respect to any claim based on the use of the Software outside the scope of the Licenses and rights expressly granted herein. In the event of any conflict between the terms of this Agreement, and the terms of any Order Schedule, the terms of this Agreement shall prevail, unless an express term of an Order Schedule provides otherwise. Any modification or amendment to this Agreement, including the Order Schedules, must be in writing and signed by authorized representatives of both parties. This Agreement shall be deemed to have been accepted by WebCT, only when it has been executed at its Massachusetts corporate headquarters by an authorized representative of WebCT. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement.

LICENSEE: _____
                    (Print or type)

By: _____
                (Authorized Signature)

Name: _____

Title: _____

Date: _____

WEBCT, INC.

By: _____
                (Authorized Signature)

Name: _____

Title: _____

Date: _____

INSTITUTION	Fall 2005 FTE	WebCT Tier Price	(2006 List Price)	ROCE CE Focus License Invoice 05/06 for term 12/31/07	WebCT Invoice 12/06 for term (6/1/06 - 12/06) 1/1/07 - 12/31/07 (2007 Pricing)
Austin Peay State University	7355	4001-8000	$ 29,925		$31,421
Chattanooga State Technical Community College	4890	4001-8000	$ 29,925		$31,421
Cleveland State Community College	2103	0-2500	$ 19,950		$20,948
Columbia State Community College	3120	2501-4000	$ 24,675		$25,909
Dyersburg State Community College	1744	0-2500	$ 19,950		$20,948
East Tennessee State University	9953	8001-15000	$ 35,700		$37,485
Jackson State Community College	2573	2501-4000	$ 24,675		$25,909
Middle Tennessee State University	19139	15001-25,000	$ 41,475		$43,549
Motlow State Community College	2392	0-2500	$ 19,950		$20,948
Nashville State Technical Institute	4074	4001-8000	$ 29,925		$31,421
Northeast State Technical Community College	3142	2501-4000	$ 24,675		$25,909
Pellissippi State Technical Community College	4963	4001-8000	$ 29,925		$31,421
Roane State Community College	3603	2501-4000	$ 24,675		$25,909
Southwest Tennessee Community College	7332	4001-8000	$ 29,925		$31,421
Tennessee State University	7462	4001-8000	$ 29,925		$31,421
Tennessee Technological University	7563	4001-8000	$ 29,925		$31,421
University of Memphis	15910	15001-25,000	$ 41,475		$43,549
Volunteer State Community College	4553	4001-8000	$ 29,925		$31,421
Walters State Community College	3826	2501-4000	$ 24,675		$25,909
RENAISSANCE CENTER (TTCs) - training instance					
(TBR) - RODP hosted by University of Memphis		4001-8000	$ 29,925		$31,421
(TBR) - ROCE hosted by University of Memphis 2007		3000 SEATS	$ 11,000	$ 11,000	
(TBR) - ROCE hosted by University of Memphis 2006				$ 6,416	
TOTALS—			$ 582,200	$ 17,416	$599,760
TOTAL PRICING FOR 2007					$ 617,176